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MUHAMAD NAZRI MUHAMAD v. JMB MENARA RAJAWALI & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
S NANTHA BALAN J
[ORIGINATING SUMMONS NO: WA-24NCvC-186-01-2018]
B 4 SEPTEMBER 2018

LAND LAW: *Strata title – Management corporation – Joint management body ('JMB') – Maintenance charges – Whether lawful for owners of condominium to pass resolution at Annual General Meeting to authorise JMB to fix different rates of payment for maintenance charges for residential, retail and car park units – Whether imposition of different rates for maintenance charges contrary to provisions in Strata Management Act 2013*

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STATUTORY INTERPRETATION: *Interpretation of Act - 'in proportion to the allocated share units' – Strata Management Act 2013, ss. 21(2), 25(3) – Whether read or construed as fettering ambit of joint management body's power to determine rate of maintenance fee – Whether provisions in Strata Management Act prevents joint management body of condominium from fixing different rates of charges for different types of units*

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The plaintiff was a residential unit owner of a condominium project, Menara Rajawali, which consists of residential units, retail shops and car park units. The first defendant was the joint management body ('the JMB') for Menara Rajawali which was run by an executive committee, joint management committee ('the JMC') while the second defendant ('D2') was the owner of all the car park units in Menara Rajawali. In the Annual General Meeting ('AGM ') of the unit owners of Menara Rajawali, held on 25 June 2016, it was unanimously resolved that a mandate be given to the JMC to fix the maintenance fee for the residential units and retail shop units at a rate not exceeding RM3.26 per share unit. In the same AGM, it was also resolved that the mandate be given to the JMC to fix maintenance charge for car park units at a rate not exceeding RM1.68 per share which was half of the rate that was applicable to the residential units and retail shop units. The plaintiff's position was that by virtue of ss. 8, 12, 21, 25 and the First Schedule of Strata Management Act 2013 ('the SMA 2013'), JMB was not permitted to charge two different rates per share unit for different categories of owners. Accordingly, the plaintiff contended that the resolutions of the AGM, allowing the JMC to charge a lower rate for car park units was *ultra vires* in law and hence, a nullity *ab initio*. The plaintiff thus, pursuant to an originating summons ('OS') sought, *inter alia*, for the resolutions to be declared null and void *ab initio*. The questions that arose for consideration

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in this OS was (i) whether it was lawful for the owners of a condominium to pass a resolution at an AGM to authorise the JMB for the condominium to fix different rates of payment for maintenance charges for the residential units, retail and car park units and (ii) whether the imposition of different rates for maintenance charges was contrary to the provisions in the SMA 2013.

Held (dismissing originating summons with costs):

(1) Section 21(1)(b) of SMA 2013 is the source of power for the JMB to determine and impose the charges to be deposited into the maintenance account for purposes of the proper maintenance and management of the buildings or lands intended for subdivision into parcels and the common property. Further, the JMB is empowered under s. 21(1)(c) of SMA 2013 to determine and impose the contribution to the sinking fund to be deposited into the sinking fund account for the purpose of meeting the actual or expected expenditure specified under s. 24(2) of SMA 2013. And pursuant to s. 21(2)(a) SMA 2013, the powers of the JMB shall be to, *inter alia,* collect the charges from the parcel owners in proportion to the allocated share units of their respective parcels. (paras 25 & 26)

(2) Clearly the JMB had at its AGM passed a unanimous resolution to allow the JMC to charge different rates of maintenance fees and sinking fund contribution for owners of condominium/retail units and owners of car park units. The limit that was imposed by the AGM was that the charges for residential units should not be more than RM3.26 per share unit (sinking fund contribution of RM0.33 per share unit) and charges of not more than RM1.68 for car park (sinking fund contribution of not more than RM0.17 per share unit). It was quite apparent that the relevant sections of the SMA 2013 relied upon by the plaintiff did not proscribe any differentiation of maintenance and sinking fund rates between residential/retail units and car park units. It was for the AGM comprising of the owners to decide whether the rate for payment of maintenance charges for all types of units should be uniform or whether depending on the facts and circumstances, there should be a difference in the rates. (paras 27 & 28)

(3) Section 25(3) SMA 2013 stipulates that the charges payable shall be determined by the JMB from time to time in proportion to the allocated share units of each parcel. No doubt, the share units had been determined pursuant to s. 8 of SMA 2013 read together with the First Schedule of SMA 2013, but that only meant that pursuant to the statutory formula, share units had been fixed for the respective units. The share unit is what would ordinarily be described as the 'multiplier'

A for purposes of determining the maintenance fee payable, whereas the rate payable, as determined by the JMB *via* the JMC was the 'multiplicand.' The share unit or multiplier is fixed, whereas the multiplicand or rate can vary depending on what the JMB decides at the AGM. (paras 29 & 30)

B **(4)** This court did not agree that the phrase 'in proportion to the allocated share unit' of each parcel (per s. 25(3) of SMA 2013) or in proportion to the allocated share units of their respective parcels (as per s. 21(2) (a) SMA 2013) could be read or construed as fettering the ambit of the JMB's power (as approved by the AGM) to determine such rate of C maintenance fee or sinking fund contribution, as was deemed appropriate in the circumstances. There was nothing in these sections of the SMA 2013, which prevents the JMB/JMC from fixing different rates of charges for different types or categories of units in the strata project, so long as this was approved by the AGM. Here, the approval D was clearly given by a unanimous resolution at the AGM on 25 June 2016. Hence, it was valid and legal for the JMB to fix different rates of charges for the residential/retail units and car park units as that was well within the mandate imposed by the AGM. Thus, there was no merit in the OS. (paras 31 & 32)

E **Legislation referred to:**
Strata Management Act 2013, ss. 8, 12, 21(1)(b), (c), (2)(a), 24(2), 25(1), (3), (4), First Schedule s. 3

For the plaintiff - Arun Kasi & Ong Kay Jin; M/s Esther Ong, Tengku Saiful & Sree
For the defendants - Andre Onn; M/s Onn & Partners

F *Reported by Suhainah Wahiduddin*

JUDGMENT

S Nantha Balan J:

G **Introduction**

[1] The question that arises for consideration in this originating summons dated 26 January 2018 ("the OS") is whether it is lawful for the owners of a condominium to pass a resolution at an Annual General Meeting ("AGM") to authorise the joint management body ("JMB") for the condominium to fix H different rates of payment for maintenance charges for the residential units, retail and car-park units and whether the imposition of different rates for maintenance charges is contrary to the provisions in the Strata Management Act 2013 ("SMA 2013").

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The Background

[2] The plaintiff is a residential unit owner of a condominium project known as Menara Rajawali, which consists of residential units, retail shop units and car park units. The share units for all the units in Menara Rajawali were duly allocated in accordance with the provisions of the SMA 2013. The first defendant ("D1") is the joint management body for Menara Rajawali. Hereafter, I shall refer to D1 as "the JMB". The JMB is run by an executive committee known as the Joint Management Committee ("JMC"). The second defendant ("D2") is the owner of all the car-park units in Menara Rajawali. The shareholders of D2 are Tiong Boon Keong, Yap Eng Yeow and Lee Chun Yew ("the shareholders"). All the shareholders of D2 are also members of the JMC.

[3] In the AGM of the unit owners of Menara Rajawali, held on 25 June 2016 it was unanimously resolved that the mandate be given to the JMC to fix the maintenance fee for the residential units and retail shop units at a rate not exceeding RM3.26 per share unit.

[4] In the same AGM, it was also resolved that the mandate be given to the JMC to fix maintenance charge for car-park units at a rate not exceeding RM1.68 per share unit which is half of the rate that was applicable to the residential units and retail shop units. The minutes of the AGM read as follows:

> … AC informed that the Charges and sinking fund will need to determined based on the share unit instead of the land area of the units, pursuant to the SMA 2013. The share units were being determined by the land surveyor who had submitted the application to the land office on 03.03.2015.
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> The proposed maintenance Charges and sinking fund are:

Type	Charges per share unit	Sinking Fund per share unit
Residential units	RM3.26	RM0.33
Retail Shop units	RM3.26	RM0.33
Car park	RM1.68	RM0.17

> It was resolved by the Meeting that the management committee is given a mandate to deliberate on the maintenance charges for residential and retail shop units where the amount of Charges shall be not more than RM3.26/share unit and the contribution to sinking fund shall be 10% of the maintenance charges.

A It was also resolved that the joint management committee is given a mandate to deliberate on the maintenance charges for car park where the Charges shall be not more than RM1.68/share unit. The sinking fund shall be 10% of the Charges.

Those present have unanimously agreed to give mandate to the joint
B management committee to decide on the rate of Charges based on the above that have been resolved. There was no vote against it and the agenda was passed.

[5] The plaintiff attended the AGM had also offered himself as chairman for the meeting. According to D1, at the third Committee Meeting of the
C JMC held on 12 August 2016 (exh. RP2, encl. 5) the JMC had decided to impose the maintenance charges at the rate of RM2.80 per share unit for residential/retail units, and RM1.68 per share unit for the car park (see: paras. 15 and 16, encl. 5).

[6] The plaintiff's position is that by virtue of ss. 8, 12, 21, 25 and First
D Schedule of SMA 2013, D1 is not permitted to charge two different rates per share unit for different categories of owners. Accordingly, the plaintiff contends that the resolutions of the AGM, allowing the JMC to charge a lower rate for car park units is *ultra vires* in law and hence, a nullity *ab initio*.

[7] The plaintiff also contends that the shareholders of D2 have abused
E and misused their positions in the JMC by acting according to their own interests by allowing the lower rate for D2. Consequently, pursuant to the OS, the plaintiff seeks the following orders against D1 and D2:

(i) The resolution made at the AGM of D1 held on 25 June 2016 allowing the JMC to fix a lower rate of maintenance fees and sinking fund for the
F car park units, be declared null and void *ab initio*;

(ii) The resolution made by the JMB fixing the maintenance fee at RM1.68 for the said car park lots be declared null and void *ab initio*;

(iii) An order that D1 charges the same rate of maintenance fee and sinking
G fund per share unit to D2, for the entire past period and for the future, as applicable to the residential and retail shop units, with 10% per annum interest on all outstanding sums;

(iv) An order that D2 pays the same rate of maintenance fee and sinking fund per share unit to DI, for the entire past period and for the future, as
H applicable to the residential and retail shop units, with 10% per annum interest on outstanding sums; and

(v) Costs to be paid by the shareholders of D2.

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[8] The plaintiff's action is entirely predicated on an interpretation of ss. 8, 12, 21, 25 and the First Schedule of the SMA 2013. The starting point is s. 8 of the SMA 2013 which deals with the allocation of share units and reads as:

> (1) Where the sale of a parcel by a developer was made before the commencement of this Act and no share units have been assigned to each parcel by the developer's licensed land surveyors, the share units for each parcel shall be assigned by any person or body who has a duty or is responsible under this Part to maintain and manage any building or land intended for subdivision into parcels and the common property in accordance with the formula set out in the First Schedule, and such assignment shall be deemed to be the allocated share units of each parcel when the assignment is filed with the Commissioner.
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> (2) The allocated share units assigned to each parcel by the developer's licensed land surveyors or the share units for each parcel assigned pursuant to subsection (1) shall be deemed to be the allocated share units assigned to each parcel for the purpose of this Part until such time as the share units of each parcel have been approved by the Director pursuant to section 18 of the Strata Titles Act 1985.

[9] Next is s. 12 of the SMA 2013, which pertains to the obligations of the purchaser and developer to pay charges and contribution to the sinking fund. It reads as:

> (1) Each purchaser shall pay the Charges, and contribution to the sinking fund, in respect of his parcel to the developer for the maintenance and management of the buildings or lands intended for subdivision into parcels and the common property in a development area.
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> (2) The developer shall pay the Charges, and contribution to the sinking fund, in respect of those parcels in the development area which have not been sold, being a sum equivalent to the Charges, and contribution to the sinking fund, payable by the purchasers to the developer had the parcels been sold.
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> (3) **The amount of the Charges to be paid under subsections (1) and (2) shall be determined by the developer in proportion to the allocated share units of each parcel.**
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> (4) The amount of contribution to the sinking fund to be paid under subsections (1) and (2) shall be a sum equivalent to ten per cent of the Charges.

A (5) The purchaser shall, within fourteen days of receiving a notice from the developer, pay the Charges, and contribution to the sinking fund, to the developer and if any sum remains unpaid by the purchaser in respect of his parcel at the expiry of the period of fourteen days, the developer may recover the sum in the manner set out in section 34.

B (6) If any sum remains unpaid by the purchaser in respect of his parcel at the expiry of the period of fourteen days specified in subsection (5), the purchaser shall pay interest at the rate of ten per cent per annum on a daily basis.

C (7) Any purchaser who is not satisfied with the sums determined by the developer under subsection (3) or (4) may apply to the Commissioner for a review and the Commissioner may

(a) determine the sum to be paid as the Charges, or contribution to the sinking fund; or

D (b) instruct the developer to appoint, at the developer's own cost and expense, a registered property manager to recommend the sum payable as the Charges, or contribution to the sinking fund, and submit a copy of the registered property manager's report to the Commissioner.

E (8) Upon receiving the report under paragraph (7)(b), the Commissioner shall determine the sum payable as he thinks just and reasonable, and any sum so determined by the Commissioner shall be deemed to be the sum payable as the Charges, or contribution to the sinking fund.

F (9) Any developer who fails to comply with subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

G (emphasis added)

[10] The next section that is relied upon is s. 21 of the SMA 2013, which pertains to the duties and power of the JMB:

(1) The duties of a joint management body shall be as follows:

H (a) to properly maintain and manage the building or land intended for subdivision into parcels and the common property, and keep it in a state of good and serviceable repair;

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(b) *to determine and impose the Charges to be deposited into the maintenance account for the purpose of the proper maintenance and management of the buildings or lands intended for subdivision into parcels and the common property;*

(c) *to determine and impose the contribution to the sinking fund to be deposited into the sinking fund account for the purpose of meeting the actual or expected expenditure specified under subsection 24(2)*;

(d) to effect insurance according to this Act or to insure against such other risks as the parcel owners may by special resolution direct;

(e) to comply with any notice or order given or made by the local authority or any competent public authority requiring the abatement of any nuisance on the common property, or ordering repairs or other work to be done in respect of the common property or other improvements to the common property;

(f) to prepare and maintain a register of all parcel owners of the buildings or lands intended for subdivision into parcels;

(g) to ensure that the accounts required to be maintained by the joint management body under this Act are audited and to provide audited financial statements for the information to its members;

(h) to enforce the by-laws; and

(i) to do such other things as may be expedient or necessary for the proper maintenance and management of the buildings or lands intended for subdivision into parcels and the common property.

(2) The powers of the joint management body shall be as follows:

(a) *to collect the Charges from the parcel owners in proportion to the allocated share units of their respective parcels;*

(b) to collect the contribution to the sinking fund from the parcel owners;

(c) to authorise expenditure for the carrying out of the maintenance and management of the buildings or lands intended for subdivision into parcels and the common property;

(d) to recover from any parcel owner any sum expended by the joint management body in respect of that parcel in complying with any such notice or order as referred to in paragraph (1)(e);

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(e) to purchase, hire or otherwise acquire movable property for use by the parcel owners in connection with their enjoyment of the common property;

(f) to employ or arrange and secure the services of any person or agent to undertake the maintenance and management of the

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common property of the building or lands intended for subdivision into parcels;

(g) subject to subsection 32(3), to make additional by-laws for the proper maintenance and management of the buildings or lands intended for subdivision into parcels and the common property; and

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(h) to do all things reasonably necessary for the performance of its duties under this Act and for the enforcement of the by-laws.

(3) Notwithstanding any other provisions of this Act, the joint management body shall not enter into any contract relating to the

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maintenance and management of any building or land intended for subdivision into parcels and the common property in the development area for any period exceeding twelve months.

(4) Where:

(a) the joint management body incurs any expenditure or performs

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any repairs, work or act that it is required or authorised by or under this Part or by or under any other written law to perform, irrespective of whether or not the expenditure was incurred or the repairs, work or act were or was performed consequent upon the service of any notice or order on it by any Government or statutory authority; and

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(b) the expenditure or the repairs, work or act referred to in paragraph (a) were or was rendered necessary by reason of any wilful or negligent act or omission on the part of, or breach of any provision of its by-laws by, any parcel owner or his tenant, lessee, licensee or invitee, the amount of the expenditure of any

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money expended by the joint management body in performing the repairs, work or act shall be recoverable by it from that parcel owner as a debt in an action in any court of competent jurisdiction or before the Tribunal.

(5) The generality of this section shall not be prejudiced by any other provision in this Part conferring a power or imposing a duty on the

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joint management body.

(emphasis added)

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[11] Finally, the plaintiff relies on s. 25 of the SMA 2013, which deals with the owner's obligation to pay charges and contribution to sinking fund to the JMB. It reads as follows:

> (1) Each purchaser shall pay the Charges, and contribution to the sinking fund, in respect of his parcel to the joint management body for the maintenance and management of the buildings or lands intended for subdivision into parcels and the common property in a development area.
>
> (2) ...
>
> (3) *The amount of the Charges to be paid under subsections (1) and (2) shall be determined by the joint management body from time to time in proportion to the allocated share units of each parcel.*
>
> (4) The amount of contribution to the sinking fund to be paid under subsections (1) and (2) shall be a sum equivalent to ten per cent of the Charges unless otherwise determined by the joint management body from time to time at a general meeting which shall not be less than ten percent of the Charges. (emphasis added)

The Undisputed Facts

[12] Menara Rajawali is a mixed development comprising of residential units, retail shop units and car park units. Share units have duly been allocated for all the units in the Menara Rajawali pursuant to SMA 2013. In the AGM, it was resolved that the mandate be given to the JMC to fix the maintenance fee for the residential units and retail shop units at a rate not exceeding RM3.26 per share unit.

[13] In the same AGM, it was also resolved that the mandate be given to the JMC to fix maintenance charge for car park units at a rate not exceeding RM1.68 per share unit which is half the rate that was applicable to the residential units and retail shop units. Following that, the JMC fixed the rate of the maintenance fee for the residential units and retail shop units at RM2.80 per share unit and for the car park units at RM1.68 per share unit.

[14] Accordingly, D1 charged and D2 paid the above-said lower rate of maintenance fee and sinking fund (being 10% of the maintenance fee) for the car-park units.

Plaintiff's Case

[15] The predominant issue, in this case, is whether, as a matter of law namely SMA 2013, DI could charge a maintenance/sinking fund rates to an owner at a rate which is different from others. The starting point is that share units are allocated to parcels by virtue of s. 8 of the SMA 2013, following the formula in the First Schedule to the SMA 2013. It was contended that

the First Schedule contains a technical formula that takes into account the area of the parcel, the weightage attributed to the type of the parcel, the weightage attributed to the parcel based on air conditioning facilities in common areas, weightage differentiated for the whole-floor parcel, and weightage differentiated for an accessory parcel.

[16] Thus, the plaintiff argues that the allocated share unit for a residential unit of a certain size in a building will be different from the allocated share unit for a car park of the same size in that building, because the applicable weightage factors are different. By virtue of s. 21(1)(b) of the SMA 2013, the duties of a joint management body, *inter alia*, are to "determine and impose the charges to be deposited into the maintenance account for the purpose of the proper maintenance and management of the buildings."

[17] It was contended that by virtue of s. 21(2)(a) of the SMA 2013, the powers of the joint management body, *inter alia*, are to "collect the charges from the parcel owners in proportion to the allocated share units of their respective parcels."

[18] Lastly, it was emphasised that pursuant to s. 25(1), (3) and (4) of the SMA 2013, the charges (maintenance fees) payable by any owner shall be in proportion to the allocated share unit of his parcel. The plaintiff therefore contends that different rates for different categories of parcels are not allowed under s. 25 of the SMA 2013 and that any attempt by a JMB/JMC to fix discriminatory rates for different types of parcels will amount to re-weighing of the allocated share units which would be contrary to the scheme provided in the First Schedule of SMA 2013.

[19] It was argued for the plaintiff that under SMA 2013, it is beyond the authority of D1 or the JMC, to fix different rates per share unit for different categories of owners. Hence, the plaintiff contends that the relevant resolutions made by D1 and JMC are void *ab initio* as they contravene SMA 2013. According to the plaintiff, the three members of the JMC (being shareholders of D2) abused and misused their dominant position as they constituted 3/4 in the JMC and allowed lower rates for D2, which was in their own commercial interests.

[20] Accordingly, the plaintiff argued that the resolution that was made at the AGM on 25 June 2016 which authorised or mandated the JMB/JMC to charge a lower rate for car-parks, is contrary to SMA 2013 and is null and void *ab initio*.

Defendants' Case

[21] The defendants' answers to the claim are in essence that:

(i) the car park facility is a service to the owners;

(ii) if the maintenance fee was higher, then the car park charges too would be correspondingly higher;

(iii) no maintenance services like security and cleaning are provided for the car parks;

(iv) water and electricity payments in respect of the car parks are paid by D2; and

(v) the lifts in the car park area are maintained by D2.

[22] It was argued for the defendants that ss. 8, 12, 21 and 25 and the First Schedule of the SMA do not in any way prohibit the JMC from charging different rates of the maintenance charges to be paid by the other owners as compared to owners of car-parks.

[23] In amplification, it was argued for the defendant that the 'weightage' provided in Table 1, s. 3, First Schedule of the SMA, shows differing weightage for parcels having benefits of common lifts without air conditioning (see: item (1) Apartment at 1.00; (3) Retail at 2.00; and (6) car park (whole floor parcel) at 0.75). Further, s. 21(1)(b) of the SMA 2013 provides that the JMB is under a duty to determine and impose the charges. It was argued that the JMB which was properly constituted by reason of the 1st AGM held on 25 June 2016, had acted within the powers conferred upon it to determine the charges.

[24] It was therefore contended that the JMB had not acted *ultra vires* the powers conferred upon it by SMA 2013 and had in fact carried out its duty as mandated by the JMB and that the prayers sought that the resolution of the AGM dated 25 June 2016 be declared null and void are not tenable in law, or in fact.

Analysis

[25] The crux of the issue is whether the JMB is entitled to charge two different rates per share unit, for different categories of owners. Section 21(1)(b) of the SMA 2013 is the source of power for the JMB to determine and impose the charges to be deposited into the maintenance account for purposes of the proper maintenance and management of the buildings or lands intended for subdivision into parcels and the common property.

[26] Further, the JMB is empowered under s. 21(1)(c) of the SMA 2013 to determine and impose the contribution to the sinking fund to be deposited into the sinking fund account for the purpose of meeting the actual or

A expected expenditure specified under sub-s. 24(2) of the SMA 2013. And pursuant to s. 21(2)(a) of the SMA 2013, the powers of the JMB shall be to, *inter alia*, collect the charges from the parcel owners in proportion to the allocated share units of their respective parcels.

B **[27]** Clearly, the JMB had at its AGM on 25 June 2016, passed a unanimous resolution to allow the JMC to charge different rates of maintenance fees and sinking fund contribution for owners of condominium/ retail units and owners of car-park units. The limit that was imposed by the AGM was that the charges for residential units should not be more than RM3.26 per share unit (sinking fund contribution of RM0.33 per share unit) C and charges of not more than RM1.68 for car park (sinking fund contribution of not more than RM0.17 per share unit). It is quite apparent that the relevant sections of the SMA 2013 relied upon by the plaintiff do not proscribe any differentiation of maintenance and sinking fund rates between residential/ retail units and car park units.

D **[28]** In my view, it is for the AGM comprising of the owners to decide, whether the rate for payment of maintenance charges for all types of units should be uniform or whether depending on the facts and circumstances, there should be a difference in the rates.

E **[29]** In this regard, it is relevant to note that s. 25(3) of the SMA 2013 stipulates that the charges payable shall be determined by the JMB from time to time in proportion to the allocated share units of each parcel. No doubt, the share units have been determined pursuant to s. 8 of the SMA 2013 read together with the First Schedule of the SMA 2013, but that only means that pursuant to the statutory formula, share units have been fixed for the F respective units.

[30] In my view, the share unit is what would ordinarily be described as the "multiplier" for purposes of determining the maintenance fee payable, whereas the rate payable, as determined by the JMB *via* the JMC (pursuant to the approval by the AGM) is the "multiplicand". The share unit or G multiplier is fixed, whereas the multiplicand or rate can vary depending on what the JMB decides at the AGM.

[31] Having read the relevant sections of the SMA and having considered the submissions of the parties, I do not agree that the phrase "in proportion to the allocated share units" of each parcel (per s. 25(3) of the SMA 2013) H or in proportion to the allocated share units of their respective parcels (as per s. 21(2)(a) of the SMA 2013), can be read or construed as fettering the ambit of the JMB's power (as approved by the AGM) to determine such rate of maintenance fee or sinking fund contribution, as is deemed appropriate in the circumstances. I

[32] In my view, the issue here concerns the proper interpretation to the relevant sections of SMA 2013, and whether these sections can be read as limiting or curtailing the power of the JMB/JMC to determine such rate of charges as are deemed appropriate in the circumstances. To me, it is quite clear that there is nothing in these sections of the SMA 2013, which prevents the JMB/JMC from fixing different rates of charges for different types or categories of units in the strata project, so long as this is approved by the AGM. Here, the approval was clearly given by a unanimous resolution at the AGM on 25 June 2016. Hence, it was perfectly valid and legal for the JMB to fix differing rates of charges for the residential/retail units and car-park units as that is well within the mandate imposed by the AGM. In the circumstance, I am impelled to the view that there are no merits in the OS and it is hereby dismissed. It, therefore, becomes unnecessary to consider all the other issues *vis-à-vis* the conduct of D2 or its shareholders. In any event, I am not confident that the motives of the shareholders of D2 can be investigated *via* the OS. But in view of my ruling on the main issue, these other complaints do not arise for consideration.

Outcome

[33] The OS is dismissed with costs of RM5,000 (subject to 4% allocator) to be paid by the plaintiff to D1 and costs of RM5,000 (subject to 4% allocator) to be paid by the plaintiff to D2.

Order accordingly.